

**IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.**

**NO. 10-COURT'S ORDER WHETHER THE CASE IS  
OR IS NOT APPROVED FOR REORTING.**

[Chapter VIII, Rule 32(2) (b)]

**Criminal Appeal No. 320/2001  
(Old No.2245 of 1985)**

|                     |     |             |
|---------------------|-----|-------------|
| Khag Ram and others |     | Appellants. |
|                     | Vs. |             |
| State               |     | Respondent. |

Decided on 28-03-2006

A.F.R. (Approved for Reporting)  
Not Approved for Reporting

**(P.C.Verma, J.)**

**(B.C. Kandpal, J.)**

Dated: 28-03-2006

**In the High Court of Uttarakhand, at Nainital.**  
**Criminal Appeal No. 320/2001**  
**(Old No.2245 of 1985)**

1-Khag Ram

2- Bala Ram

3-Puran Ram

4-Ramesh Ram

All sons of Bachi ram.

5- Pad Ram S/o Deb Ram

All residents of Village Amoli, Post Garur,

District Almora

.....

Appellants.

Versus

State

.....

Respondent.

Sri Arvind Vashist, learned counsel for the appellants.

Sri H.C. Pandey, learned A.G.A. for the State.

**Coram: Hon'ble P.C. Verma, J.**

**Hon'ble B.C. Kandpal, J.**

Dated: 28-3-2006

This criminal appeal has been preferred by the appellants against the judgment and order dated 3-8-1985, passed by the then Sessions Judge, Almora, in S.T. No. 01/1985, whereby the accused/appellants were held guilty for the offences U/Ss 147, 302/149, 307/149 and 323/149 I.P.C. and each of them was sentenced to undergo life imprisonment U/s 302/149 I.P.C.; one year's R.I. U/S 147 I.P.C.; five years R.I. U/S 307/149 I.P.C. and six months' R.I. U/S 323/149 I.P.C. However, all the sentence were to run concurrently. Co-accused Ratan Ram and Ramesh Ram S/o Ishwari Ram were found not guilty and acquitted of the charges levelled against them.

2- The prosecution version which led to the trial of the accused/appellant is as follows:-

Chani Ram deceased was resident of Village Amoli. The accused/appellants (hereinafter called the appellants) are also the residents of the said village. The deceased Chani Ram was in jail in connection with a case under Section 302 I.P.C. for committing the murder of one Dharam Ram. He was acquitted by the Sessions Court, Almora on 15.11.1984 and was released from the jail. In the

morning of 16.11.1984 Chani Ram along with his brother Jagdish Ram and his son Girish Ram reached Garur from Almora by bus and from Garur these three persons were proceeding on foot for their village Amoli. When they reached at Dhautara Toke of Village Silli, the appellants along with co-accused Ratan Ram and Ramesh Ram S/o Ishwari Ram, who were hiding themselves in the bushes armed with lathis, came out and started beating Chani Ram, Jagdish Ram and Girish Ram with their weapons. Jagdish Ram and Girish Ram anyhow escaped themselves, while Chani Ram received serious injuries and fell down on the spot. According to the prosecution the appellants were inimical to Chani Ram as appellants Khag Ram and Pad Ram along with some other persons were prosecution witnesses in the murder case against Chani Ram.

3- The first information report of the occurrence was lodged by Jagdish Ram, the brother of deceased Chani Ram, at Patwari Chauki Patali on 16-11-1984 at 1.20 P.M. The Patwari registered the case under Sections 307/147 I.P.C against the accused persons and prepared the first F.I.R., Ext. Ka. 2. The Patwari Mohan Chandra Tiwari recorded the statements of witnesses Girish Ram and Jagdish Ram. These injured witnesses were having injuries on their persons; hence the I.O. sent them to P.H.C. Baijnath along with his peon for medical examination. As the doctor was not available in P.H.C. Baijnath, the injured were sent to P.H.C. Bageshwar, where they were medically examined by the doctor. The I.O. went at the spot where Chani Ram was fallen injured. The I.O. inspected the place of occurrence and prepared site-plan Ext. Ka. 6 He also took into possession the blood-stained and plain earth from the place of the occurrence vide recovery memos Ext. Ka.14 and Ka.15 respectively and sealed the same in two packets. The I.O. found injuries on the person of Chani Ram and on inquiry from him it was found that he was in a position to give statement. Hence Chani Ram gave his dying declaration in the presence of Naib Tehsildar, Qanoongo Kausani Narendra Pratap Singh, Tara Dutt Pandey and Bhim Singh Rana Patwari of Garur Circle. The dying declaration of the deceased, Ext. Ea. 7, was recorded by Patwari Bhim Singh Rana. The statement was read over to the deceased and thereafter he put his thumb impression

on it. The I.O. sent Chani Ram P.H.C. Bageshwar through his peon where he was declared dead by the doctor the same day, i.e. on 16.11.1984. The I.O. converted the case under Sections 307, 302, 323, 147 I.P.C. On 17.11.1984 the I.O. arrested the appellants. On interrogation, each of the the appellants Ramesh Ram, Puran Ram, Bala Ram, and Pad Ram handed over him the Lathis whereas appellant Khag Ram and co-accused Ratan Ram both handed over one lathi and one bag each used by them in the incident and prepared memo of recovery Ext. Ka.8 to Ext. Ka. 13. (Lathis have been marked material exhibits Ka. 6 to Ka-11 and the bags as material exhibits. 2 and 3). The inquest on the dead body of Chani Ram was performed by S.L. Verma, S.I., P.S. Bageshwar at Police Station, Bageshwar and he prepared the inquest report, Ext. Ka. 16. He sealed the dead body and wrote letter to Supdt. P.H.C. Bageshwar, prepared challan dead body, sketch map of dead body and police form No. 33, Exts. ka. 17 to Ka.20 respectively and sent the dead body for post mortem examination to P.H.C. Bageshwar. The I.O. on completion of investigation, submitted charge sheet Ext. Ka. 15 against the accused persons.

4- After the appellants were committed to the court of Sessions, the trial Judge framed charges U/Ss 147, 302/149, 307/149 and 323/149 I.P.C. against them and two other co-accused, to which they pleaded not guilty and claimed to be tried.

5- The prosecution in order to prove its case, examined in all eight witnesses. P.W.1 Chandra Dutt is the peon of the Patwari. He had brought Chani Ram to P.H.C. Bagehswar where he was declared dead. He also deposed that he had given written information, Ext. Ka. 1 about the death of Chani Ram, to the Patwari.

6- P.W.2, Jagdish Ram is the injured eye witness. According to him the appellants are residents of his village. This witness is the younger brother of deceased Chani Ram. He has deposed that Chani Ram was in jail in a murder case and on 15-11-1984 he was acquitted by the Court, In the morning of 16-11-1984 he, the deceased Chani Ram and deceased's son Girish Ram proceeded to Garur in a bus and from Garur they stated on foot to reach their village Amoli. At about 12-30 P.M. when they reached in Dhautara Toke, the appellants

Khag Ram, and Bali Ram (Bala Ram) armed with Lathis came out and Khag Ram started assaulting Chani Ram whereas Bali Ram assaulted him. Thereafter accused Ramesh Ram S/o Bachi Ram, Puran Ram, Pad Ram also came out of bushes armed with Lathis. Ramesh Ram assaulted Girish Ram and accused Pad Ram and Puran Ram, surrounded Chani Ram and assaulted him with Lathis. This witness has deposed that he had seen the aforesaid five accused persons at the spot and no other person was there. This witness also stated that he ran away from the spot and went to Patwari Patli where he lodged the F.I.R., Ext. Ka.2. This witness also stated that Girish Chandra also came at the Patwari Chauki and the Patwari sent them to P.H.C. Baijnath for medical examination where the doctor was not available, hence they were sent to P.H.C. Bageshwar where their medical examination was conducted.

7- P.W.3, Girish Ram is also injured eye witness. He has supported the statement of P.W.2. This witness deposed that appellants Khag Ram, Bali Ram, Puran Ram and Pad Ram were armed with Lathis and were assaulting Chani Ram. Appellant Ramesh Ram S/o Bachi Ram assaulted him with Lathi whereas appellant Bali Ram also assaulted Jagdish Ram with Lathi. However he deposed that when he ran away from the spot, he saw Ratan Ram and Ramesh Ram S/o Ishwari Ram there but they were not having any weapon in their hands. They were telling that he is running away, he also be caught.

8- P.W.4, Dr. S.C. Joshi, has medically examined Jagdish Ram, P.W.2. at 3P.M. on 16.11.84 and found the following injuries on his person:-

- (1) Lacerated wound 6cm x 1cm on parietal region right side of head, margins everted.
- (2) Lacerated wound 1cm x 0.5cm on temporal region, right side of head, margins everted.
- (3) Contusion 5cm x 5cm around injury No.2. Reddish colour.
- (4) Abrasion 5.5cm x 1.5cm right ear.
- (5) Lacerated wound at center of forehead 1cm x 1cm x fascia deep.
- (6) Lacerated wound 8cm x 1cm on left temporal region of head.

- (7) Lacerated wound in mastoid region head behind left ear 2cm x 2cm x fascia deep.
- (8) Contusion of forehead face left side 2cm x 2cm red in colour.
- (9) Lacerated wound on posterior temporal region, left side 5cm x 1cm.
- (10) Contusion with haematoma 7cm x 7cm at mandibular and parotid area of face right side.
- (11) Contusion 4cm x 4cm on shoulder region left side redish in colour.
- (12) Small contusions in an area of 8cm x 7cm in deltoid region left arm red in colour.
- (13) Abrasion 0.25 cm x 0.25 cm left side of left hand at middle region.
- (14) Contusion around injury No. 13 size 3cm x 3cm tenderness present. Fracture subject to the confirmation by x-ray which is advised.
- (15) Abrasion 1cm x 1cm on lateral surface of left hand lower end near wrist.
- (16) Abrasion 0.5 cm x 0.5cm on dorsal surface left hand at the base of little finger.
- (17) Contusion on left scapular region size 6cm x 6cm red in colour.
- (18) Abrasion 0.5cm x 0.5cm at knee joint lateral to patella left side.
- (19) Abrasion just below patella size 0.5cm x 0.5cm.
- (20) Abrasion 0.5cm x 0.5cm on anterior surface of tibia left leg at middle region.

In the opinion of the doctor all the injuries, except injury No.14, were simple . Injury No. 14 was kept under observation. The witness has proved the injury report, Ext. Ka.3. He opined that the injuries were caused by some blunt weapon and were fresh at the time of medical examination. He also stated that lacerated wound could have been caused by Lathi and abrasions could be caused due to friction with hard surface.

This witness also medically examined Girish Chandra, P.W.3, on the same day at 3.30 P.M. and found the following injuries on his body:-

- (1) Complaint of pain on left arm but no obvious injury seen.
- (2) Complaint of pain over left shoulder, but no obvious injury seen.

The medical officer proved the injury report, Ext. Ka.4. According to this witness in case a person was wearing clothes and the force of the impact of Lathi was less, then it was possible that the same may not cause a visible injury though it may cause pain.

9- Hari Dutt P.W.5 did not support the prosecution case and on the request of the prosecution he was declared hostile.

10- 10- P.W.6, Dr. N.D. Punetha conducted the post mortem examination on the dead body of Chani Ram deceased at 11 A.M. on 17.11.1984 and found the following ante-mortem injuries on his person:-

- (1) Lacerated wound 10cm x 2cm x bone deep present on the right side of the forehead. Blood clot was present.
- (2) Lacerated wound 5cm x 1cm x muscle deep present on the right side of the lateral angle of the eye.
- (3) Contusion 4cm x 2cm right side of the scapular region.
- (4) Contusion 6cm x 2 ½ cm present on the right side of the forearm In lower half.
- (5) Contusion 7cm x 2 ½ cm present on the left side of the forearm in lower half.
- (6) Contusion 6cm x 2 ½ cm present on the left side of the arm.
- (7) Contusion 2 ½ cm x 2 ¼ cm present on the left side of the knee joint.
- (8) Contusion 10cm x 2 ½ cm present on the right side of the leg upto the ankle joint.
- (9) Lacerated wound 2 ½ cm x 1cm x muscle deep present on the right side of the index finger. Blood clot was present.

On internal examination fracture of skull under injury No.1 was found and clot of blood was present. Radius and ulna bones of right hand were fracture under injury No.4. Radius and ulna bones of left

hand were fracture under injury No.5. Tibia and fibula bones of right leg were fractured under injury No.8.

In the opinion of the doctor the death was caused as a result of shock and haemorrhage due to the ante-mortem injuries. He proved the post mortem examination report, Ext. Ka. 5. He also opined that the injuries could have been caused by Lathis and were sufficient to cause death in the ordinary course of nature. He also deposed that the death could have been caused at about 8 P.M. on 16.11.1984.

11- P.W.7, Mohan Chandra Tiwari is the I.O. of the case. This witness has deposed about the steps taken by him during the investigation and proved the various prosecution papers as above. He also proved the dying declaration of deceased Chani Ram, Ext. Ka.7. This witness also deposed that on 5-12-1984 the witness Hari Dutt has given him his statement, ext. Ka.14, U/S 161 Cr.P.C. during investigation

12- P.W.8, Constable C.P. Revti Nandan was posted at P.S. Bageshwar at the time of the incident. He has deposed that Soni Lat Verma S.I. was posted at P.S. Bageshwar and he was proved the inquest report, letter for post mortem, challan dead body, sketch map and form No.33 prepared by S.I. S.L.Verma, which were marked as Exts. Ka. 16 to ka.20 respectively.

13- Apart from the evidence of the above prosecution witnesses, prosecution also filed the statement of Head Constable Nitya Nand Bhatt, Malkhana Moharir in the form of affidavit. He sworn in the affidavit that on 19-11-1984 he was posted as Malkhana Moharir and the peon of Patwari deposited two sealed packets in the Malkhana and the said packets remained intact there.

14- The appellants in their statement U/S 313 Cr.P.C. denied the prosecution allegations and stated that they have been falsely implicated in the crime. In defence they examined Jaiwant Singh Pharmacist P.H.C. Baijnath. This witness has brought the attendance register of medical officers of the P.H.C. He stated that at page No. 63 of the attendance register, on 16-11-1984 attendance of Dr. V.P.S. Chauhan is recorded. this witness has filed the copy of the attendance register, and proved it Ext. Kha. 1. He further deposed that during winter P.H.C. remains open from 9 A.M. to 3 P.M.

whereas in summer it remains open from 8 A.M. to 2 P.M. he could not tell that on 16.11.1984 upto what time Dr. Chauhan was present in the P.H.C. he told that it can be known from movement register, but movement register was not produced in the court.

15- The trial court on making assessment of the evidence on record and after hearing the learned counsel for the parties came to the conclusion that the prosecution has been successful in establishing the offences U/Ss 147, 302/149, 307/149 and 323/149 I.P.C. against the appellants Khag Ram, Bala Ram, Puran Ram, Ramesh Ram S/o Bachi Ram and Pad Ram and accordingly convicted and sentenced them for offences U/Ss 147, 302/149, 307/149 and 323/149 I.P.C. and each of them was sentenced to undergo life imprisonment U/S 302/149 I.P.C.; one year's R.I. U/S 147 I.P.C.; five years R.I. U/S 307/149 I.P.C. and six months' R.I. U/S 323/149 I.P.C. However, all the sentences were to run concurrently. The trial court also arrived at a conclusion that prosecution was not successful in proving its case against co-accused Ratan Ram and Ramesh Ram S/o Ishwari Ram. Accordingly they were acquitted of the charges framed against them.

16- Feeling aggrieved, the appellants have come up in appeal.

17- We have heard the learned counsel for the appellants, learned A.G.A. and perused the evidence on record.

18- Learned counsel for the appellants has first of all argued that there was no sufficient motive for the appellants to commit the crime in question. The only motive which has been disclosed by Jagdish Ram and Girish Ram. P.W.2 and P.W.3 respectively, is that Chani Ram deceased was prosecuted for an offence U/S 302 I.P.C., in which appellants Khag Ram and Padam Ram had appeared as witnesses against him and he was acquitted by the court and on this the appellants became angry with Chani Ram deceased, but the anger of the appellants for the deceased does not give an occasion for committing the heinous crime of a murder, therefore, the motive as has been alleged by the prosecution, is very weak.

19- We do not find any force in this argument. In a criminal case, the motive does not play any important role, where the case rests on direct evidence. It is the case of circumstantial evidence where the motive plays an important role, but in the instant case the ocular

version is available on the record, therefore, the motive does not play any important role. However, as has been alleged by P.W.1, Jagdish Ram and P.W.2 Girish Ram that the appellants had grudge against the deceased and the complainant side. as the deceased was acquitted in the case of murder, Therefore this a sufficient ground for showing the motive with the appellants for committing this crime.

20- The another important aspect in this case is that the first information report was lodged on the same day at 1.20 P.M. PW.2, Jagdish Ram, who is the informant of this case, has deposed in his evidence that when the incident was taking place and he was assaulted by one of the appellant Baili Ram, he immediately ran towards the Patwari and narrated him the entire incident. Thereafter Patwari lodged the report and obtained his signatures. The manner in which the first information report has been lodged with the Patwari by the complainant, rules out any possibility of fabrication and deliberation on the part of the complainant side. The first information report being very prompt, also strengthens the prosecution case.

21- Now coming to the ocular version, we find in the evidence that the prosecution has adduced two eye witnesses, namely, P.W.2, Jagdish Ram and P.W.3, Girish Ram. Both the eye-witnesses have sustained the injuries on their person during the course of the incident. The injured Jagdish Ram. P.W.2 and Girish Ram. P.W.3 were examined by Dr. Joshi P.W.4 on 16.8.1984 and he found twenty injuries on the person of Jagdish Ram. The doctor opined that all the injuries were caused by blunt object and were fresh at the time of the medical examination. The doctor has also opined that the injuries on the temporal region were on vital part and in case the blows would have been given with great force, it could have caused the death. The doctor on the same day had also examined the injuries of Girish Ram. P.W.3 and he although did not find any visible injuries, but opined that the injured was complaining of pain on left arm and left shoulder. The doctor opined that it was possible that those injuries could have been caused on the same Day. Therefore the nature of the injuries found on the person of Jagdish ram and Girish Ram completely establishes their presence at the scene of the occurrence at the time, as has been alleged by the prosecution.

22- There is sufficient evidence to establish beyond reasonable doubt that the injuries to deceased Chani Ram as well as injured eyewitnesses Jagdish Ram and Girish Ram were caused by the appellants at the time and place and in the manner as has been alleged by the prosecution. Jagdish Ram, P.W.2 has stated In his deposition that he accompanied Chani Ram from Almora and that he, Chani Ram and Girish Ram were proceeding on foot from Garur to their village. All the five appellants came out of the bushes armed with Lathis and assaulted them with their weapons. This witness has further deposed that the injuries were caused to him and he was also pushed down after which he ran to the Patwari and lodged the first Information report. This witness also deposed that Girish Ram also ran down and started shouting and he also reached the Patwari when he was lodging the first information report. P.W.3, Girish Ram has also deposed that he had accompanied his father and Jagdish Ram and that he was also present at the scene of the occurrence at the time when the incident had taken place. He has further deposed that all the appellants came out of the bushes and started beating him, Chani Rami and Jagdish ram. This witness has further deposed that after he was hit by Lathi by appellant Ramesh Ram, he ran from that place to save himself. We do not find any infirmity or material contradiction in the deposition of P.W.3, Girish Ram which may create a doubt with regard to his presence at the place of the occurrence when the incident took place. This witness had also reached the Patwari immediately after the occurrence and at the time when the first information report was being lodged by P.W.2 Jagdish Ram.

23- Learned counsel for the appellants has argued that the injuries on the side of the complainant were caused when they had gone to beat the family members of Chinta Ram and Dharam Ram and fallen down themselves. Our attention has been drawn towards the suggestion made by the defence to P.W.2, Jagdish Ram in this regard.

24- We are not impressed with this argument. Obviously the injuries sustained by the witness P.W.2, Jagdish Ram cannot be said to be self-inflicted. Apart of this bare suggestion to P.W.2, Jagdish Ram, there is no evidence nor any circumstance to show that Chani Ram deceased and Jagidh Ram as well as Girish Ram injured persons

had gone to beat the family members of Chinta Ram and Dharam Ram and at that time they sustained the injuries on account of fall. The suggestion made by the defence to the injured witnesses appears to be a very weak attempt to create the defence.

25- As far as the medical version of the case is concerned, we have already discussed above that the injuries on the person of injured witnesses find complete corroboration with their version and their ocular version established their presence at the place of occurrence at the time of incident. We also find in the post mortem report of deceased Chani Ram that there were number of injuries on his person. The doctor opined that the death of the deceased was caused on account of cumulative effect of the injuries sustained by him. The doctor had also opined that the injuries were sufficient to cause the death of the deceased. Therefore the medical evidence also corroborates the ocular version with its full force and we do not find any contradiction between the ocular and the medical version. There is nothing on the record which may suggest that the genesis of the prosecution could be doubted on account of any reason. The manner of the incident as has been alleged by the prosecution, also finds complete support with the medical version.

26- Learned counsel for the appellants has further put a great stress on the genuineness and authenticity of the dying declaration which is allegedly recorded by the Patwari. It has been submitted that the Patwari being an Investigating Officer of the case, had no authority to record the dying declaration and the dying declaration if any, has been recorded by the Investigating Officer of this case, attaches no reliance at all. It has also been submitted that it was not possible for the deceased to say anything to the Investigating Officer keeping in view the nature of the injuries. Learned counsel for the appellants had tried to point out the deposition of the witnesses in order to show that when the Patwari reached at the place of the occurrence the deceased was already unconscious and was not in a position to speak.

27- We fail to appreciate this argument. The doctor, who had conducted the post-mortem of deceased Chani Ram, has stated in his cross-examination that the deceased could have become unconscious after fifteen minutes of receiving the injuries or even two to four

house after the same. Therefore, it cannot be said that Chani Ram must have become unconscious immediately after receiving the injuries and could not have been in a position to state anything. It is true that the dying declaration of deceased has been proved by Mohan Chandra Tiwari, who is the Investigating Officer of this case, but it also reveals from the evidence of this witness that the dying declaration was recorded in the presence of Naib Tehsildar, Kanoongo and other Patwaris who had reached the scene of the occurrence. This witness has further deposed that the dying declaration was signed by all these person who had assembled at the scene of the occurrence. It is also true that the Hon'ble Apex Court has deprecated the practice of recording dying declaration by Investigating Officer and such type of dying declaration should not be believed but the circumstances of this case are different, as in the instant case the Magistrate was not available at the scene of the occurrence when the dying declaration was recorded. The nearest Magistrate was at Bageshwar and the condition of Chani Ram, who was badly injured, was serious. The deposition of P.W.7 Mohan Chandra Tiwari Patwari, who is the Investigating Officer of this case, shows that this witness had informed the Naib Tehsildar by telephone. When the dying declaration of the deceased was recorded, Naib Tehsildar along one Narendra Pratap Singh Kanoongo, one Bheem Singh Patwari Garur and one another persons Tara Dutt Pandey were present over there and in the presence of all these persons the dying declaration of Chani Ram was recorded and the thumb impression of the deceased was also obtained on that dying declaration. This witness has also deposed that the dying declaration was scribed by Bheem Singh Patwari Garur and he has prove the hand writing of Bheem Singh, whose signature also appears on the dying declaration. This witness has further deposed that he requested Naib Tehsildar to record the dying declaration but Naib Tehsildar directed him that the dying declaration should be recorded in his presence and the same should be scribed by Bheem Singh Rana Patwari. Therefore, in view of the evidence of Investigating Officer, it is quite clear that the dying declaration of deceased Chani Ram was recorded in the presence of Naib Tehsildar as well as Kanoongo and this dying declaration was scribed by Bheem

Singh Rana Patwari, who is certainly not an Investigating officer of this case. Therefore, there is no occasion to disbelieve this type of dying declaration and there is nothing on the record to show that this dying declaration suffers with any embellishment or is a result of some tutoring or tainted one.

28- Keeping in view the evidence available on the record it is quite clear that the appellants had participated in the commission of crime, in which Chani Ram and account of the injuries sustained by him. Died as well as Jagdish Ram and Girish Ram sustained injuries on their person. The guilt for committing the aforesaid crime of murder as well as causing injuries on the person of Jagdish ram and Girish Ram is established beyond reasonable doubt.

29- Coming to the question of the role attributed to the different appellants, we have to again assess the evidence on record. P.W.2, Jagdish Ram who has sustained a number of injuries on his person, has stated in his deposition that it was appellant Khag Ram who assaulted Chani ram first with a Lathi. This witness has also stated that appellants Puran Ram and Pad Ram also assaulted at Chani Ram with Lathis. This witness has further categorically deposed that it was the appellant Bali ram who assaulted on his persons and he sustained the injuries on account of the assault by appellant Bali Ram. This witness has further deposed that it was the appellant Ramesh Ram who assaulted Girish Ram, P.W.3. This witness in his cross-examinations has specifically attributed the role of giving Lathi blows on the person of deceased Chani Ram by appellants Khag Ram, Puran Ram and Pad Ram as well as attributed the role of causing Injuries to him by appellant Bala Ram. This witness has specifically attributed the role of causing the injuries on the person of Girish Ram, P.W.3, by appellant, Ramesh Ram.

30. P.W.3, Girish Ram is also another injured witness of the prosecution and he has stated that the appellants Khag Ram, Puran Ram and Pad Ram had assaulted the deceased Chani Ram with their Lathis in their hands. This witness in his statement has also deposed that it was appellant Bali Ram who assaulted and caused injuries on the person of Jagdish Ram. P.W.2. He has further deposed that it was appellant Ramesh Ram who had assaulted and caused injuries on his

person. Therefore, keeping in view the specific role assigned to different appellants by the injured eye-witnesses, it is not possible to hold all the appellants guilty for committing the offence U/Ss 147 and 302/149 I.P.C. The evidence on record go to show that appellant Bala Ram and Ramesh Ram did not share the common intention of committing the murder of Chani Ram. They in fact had been there together at the time of committing the offence but keeping in view the specific role assigned to them it cannot be attributed that all the appellants were having the same intention and object to commit the crime of murder and rioting. Therefore, we are not inclined to convict all the appellants for committing the offence U/Ss 147, 302/149 I.P.C.

31- In view of the specific roles attributed to the appellants Khag Ram, Puran Ram and Pad Ram we come to the conclusion that these appellants are liable to be convicted for committing the offence U/S 302/34 I.P.C. As the injured Jagdish ram, P.W.2 has specifically attributed the role to appellant Bala Ram for causing injuries on his person, therefore, keeping in view the nature of injuries of Jagdish Ram, the appellant Bala Ram is convicted for committing an offence U/S 307 I.P.C. Further appellant Ramesh Ram, in view of the role assigned to him by the injured eye-witnesses, is convicted for having committed the offence U/S 323/I.P.C.

32- For the reasons stated above, we are of the view that the judgment and order passed by the Sessions Judge, convicting and sentencing the appellants U/S 147, 302/149, 307/149 and 323/149 I.P.C. is liable to be set-aside and is modified as under:-

(A) Appellants Khag Ram, Puran Ram and Pad Ram are convicted for an offence U/S 302/34 I.P.C. They are accordingly sentenced to life imprisonment.

(B) Appellant Bala Ram is convicted for an offence U/S 307 I.P.C. and is sentenced to seven years' R.I.

(C) Appellant Ramesh ram is convicted for an offence U/S 323 I.P.C. and is sentenced to six months' R.I.

33- The appeal is accordingly partly allowed with the modification mentioned by us in the body of the judgment.

34- All the appellants are on bail. The appellants shall be taken in custody forthwith. In case if the appellant Ramesh Ram has already

served out the period of sentence awarded against him, he need not surrender.

35- Let the record be immediately sent back to the court concerned, so that the C.J.M. concerned may take steps to arrest the appellants in order to serve out the sentences awarded against them.

ISB

**(B.C. Kandpal, J.)**

**(P.C. Verma, J.)**